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Committee on Enforced Disappearances
Eighth session

Summary record of the 121st meeting
Held at the Palais Wilson, Geneva, on Tuesday, 3 February 2015, at 10 a.m.

Chairperson: Mr. Decaux

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The meeting was called to order at 10.05 a.m.

Consideration of reports of States parties to the Convention (*continued*)

Initial report of Mexico (continued) (CED/C/MEX/1 and CED/C/MEX/Q/1)

1. *At the invitation of the Chairperson, the delegation of Mexico took places at the Committee table.*

2. **Mr. Hazan** said that he wished to know whether the Government of Mexico considered that article 13 of the Convention constituted an agreement between the States parties in the absence of a specific extradition treaty. Noting that, under Mexican law, extradition would be denied if the person in question had been the subject of an acquittal, pardon or amnesty, he wondered whether that might not pose an unreasonable obstacle to investigations and to cooperation between States. He requested further information about the 28 treaties on mutual legal assistance ratified by Mexico and asked for copies of some of them.

3. Taking note of the fact that federal police officers were required to record arrests in the administrative register established for that purpose, he asked whether a similar requirement applied to state and municipal police forces and to detention in other types of facilities, such as psychiatric institutions and migrant holding centres.

4. He asked whether the delegation believed that the institution of preventive custody, or *arraigo*, put persons at risk of being subjected to enforced disappearance, and he wished to know whether its sphere of application included migrants. The delegation should explain why the difficulty of obtaining evidence for the prosecution of organized crime cases made the use of preventive custody necessary and why that type of difficulty could not instead be resolved by recourse to pretrial detention. He wished to learn more about the current status of the proposed constitutional reform which provided that *arraigo* could be used only in cases of organized crime. Did the executive branch support that reform? He would also like to know whether the changes in criminal procedure referred to during the preceding meeting would involve any changes in the institution of *arraigo*.

5. **Mr. Huhle** said that he felt that the definition of the term "victim" that was contained in the Victims Act and applied by the Executive Commission for Victim Support was well-conceived. He would like to know whether the same definition was also applied by the Office of the Assistant Attorney General for Human Rights, Crime Prevention and Community Services and the Strategic General Directorate for Human Rights of the Ministry of the Interior. He also wished to know how responsibilities relating to victim support were distributed among those three institutions. Did victims of enforced disappearances that had taken place prior to the entry into force of the Victims Act also have access to the benefits provided for in the Act? He would also like to know whether the Executive Commission for Victim Support or some other body conducted an assessment to determine whether a person qualified as a victim even if no investigation had been carried out by the police or prosecution services. He welcomed the Commission's practice of accepting victims' claims in good faith and wished to know whether that had any bearing on prosecutorial investigations.

6. He wondered how victims who did not have Internet access could contact the First Response Unit. He wondered about the fate of victims in states that failed to comply with their obligation to provide first-responder services, and he wished to know whether the register of victims provided for in the Victims Act was used throughout the country. It would be of interest to learn exactly how victims participated in the work of the Executive Commission for Victim Support.

7. He wished to know what type of reparation the Ministry of the Interior had provided to the 87 social and political activists who had thus far received reparation as victims of human rights violations in the 1960s and 1970s and what was hindering the award of reparation to the victims in the other 188 of those cases that were still pending. What were the differences between the national genetic information system, the genetic database maintained by the Attorney General's Office and the new ante-mortem/post-mortem database? Would all three be maintained simultaneously?

8. He asked why the Attorney General's Office did not provide records of its investigations to victims in cases that might involve organized crime. He wished to know whether the proposed amendments of the Federal Act on Transparency and Access to Public Information would curtail victims' right to the truth as currently provided for in the Act. Noting that family members of the victims of the Iguala incident had been searching for their loved ones' remains and had, in some cases, found them, he asked what had been done with those remains and how the Government was supporting those searches. He understood that the National Human Rights Commission had asked the Ministry of the Interior and the government of the State of Guerrero to instruct their staff to abstain from expressing opinions that might revictimize or put at risk the human rights defenders, victims and family members involved in the Iguala incident. What steps would be taken in order to comply with that request?

9. **Mr. Hazan** said that, while the Victims Act did address the State party's obligations under article 24 of the Convention, specific legislation needed to be passed in each state in order for the Act to become fully operational. He would like to know how the Government planned to ensure that its obligations under article 24 were met throughout the country. He also wished to know whether the same requirements concerning the passage of legislation at the state level would apply to the proposed general law on enforced disappearance. Further information would be appreciated on the protocol on searches for disappeared persons currently being prepared by the Attorney General's Office, including its objectives, its current status and the timeline for its entry into force.

10. Noting that migrant children were particularly vulnerable to enforced disappearance, as well as child trafficking, he requested statistics on disappearances of migrant children and asked whether any special preventive action was being taken in the areas near migration routes. Were there any institutions that were equipped to search for and rescue child victims of enforced disappearance or trafficking and return them to their families? It would be of interest to learn whether article 14 of the Inter-American Convention on Conflict of Laws concerning the Adoption of Minors was considered to be a valid legal basis for the annulment of an adoption originating in an enforced disappearance. How were articles 30 and 31 of the General Children's Act applied in such cases? He asked what judicial remedies were available for families seeking the return of a child whose identity had been stolen and who had been taken to a Central American country. Lastly, he wished to know if there were any plans to pass legislation on the prevention of the wrongful removal of children subjected to enforced disappearance and the punishment of persons committing such acts.

11. **Mr. López Ortega**, noting that extensive information had been provided on the legal grounds for refusing to grant an extradition request in cases where the person concerned might be at risk of human rights violations, said that he wished to know whether the same grounds applied to the deportation of foreign nationals and, if so, what procedures were followed and which authority was responsible for determining the level of risk. He wished to know what specific legal provisions governed the maintenance of registers in places of detention, including migrant holding centres, psychiatric institutions and military facilities. What was the time frame for notifying detainees' relatives of their detention and of the location where they were being held? In cases where inmates were transferred to a

different prison, what procedure was used to inform their relatives of the transfer? He asked whether administrative detention was permitted under Mexican law and, if so, whether such detentions were also registered.

12. He was confused by the fact that the Government had cited detention in prison as a possible reason why an individual's whereabouts might be unknown, since, if the individual's relatives were properly informed of the person's arrest, as the State party claimed, then they would have no reason to file a missing person report. He asked the delegation for clarification on that matter.

13. **Mr. Al-Obaidi** said that he wished to know whether there were any training courses that dealt specifically with the Convention and asked how the State ensured that relevant training was provided to security forces and judicial officials at all levels of government.

14. **Mr. Yakushiji** requested further information about the proposed regulatory bill on deportation procedures and about the criteria that would be used to decide whether individuals would be at risk of enforced disappearance if deported. He would like to know whether foreigners subject to a deportation order had the right to petition for *amparo* and what effect the new bill might have on such procedures. An explanation would be appreciated regarding the distinction made between victims of crime and victims of human rights violations in terms of the support and reparation provided to them. He wished to know whether a judgement of the Inter-American Court of Human Rights in which it awarded reparation would have automatic effect in Mexico. Would Views issued by the Committee in which it found a violation of the Convention by Mexico be immediately enforceable? Lastly, he would be interested to learn how many victims of enforced disappearance had received assistance under the Victims Act.

15. **Ms. Janina** asked how many of the 33 bilateral extradition treaties signed by Mexico included enforced disappearance as an extraditable offence. She wished to know whether the State party accepted diplomatic assurances in cases of expulsion, return, surrender or extradition and, if so, under what conditions such assurances might be accepted. Did the Government of Mexico plan to adopt a specific law on the wrongful removal of children who were subjected to enforced disappearance? She would appreciate further information about the local and state criteria for the issuance by the police of an AMBER Alert in the case of a child's disappearance. Had such alerts been successful thus far?

The meeting was suspended at 10.45 a.m. and resumed at 11.20 a.m.

16. **Mr. Fonseca Leal** (Mexico) said that the State party's extradition procedures were in line with international standards. The State party had ratified numerous international treaties on mutual legal assistance, particularly with other countries in the region, which provided for cooperation in the area of extradition. Under those treaties, efforts were made to facilitate forensic research and to assist in locating and identifying disappeared persons. The Cavallo case served as an example of such cooperation at all levels. Decisions regarding the issuance of extradition orders were not based on a set list of offences but rather on the existence of double criminality. Therefore, provided that a crime was punishable by at least 1 year's imprisonment in both countries and an arrest order had been issued by the requesting country, an extradition request could be granted. Following the 2008 constitution reform, *arraigo* orders could be applied only for serious offences or those committed by organized crime and for periods of no more than 40 days (or 80 days under exceptional circumstances). Under a transitional article, existing *arraigo* orders issued by a local court would remain binding until the new criminal justice system entered into force in 2016; after that date, *arraigo* orders could be issued only by federal courts and only in cases involving organized crime. The purpose of *arraigo* was to ensure that the suspect remained

present throughout the investigation and to protect the integrity of evidence, victims and witnesses.

17. **Mr. Gómez Robledo** (Mexico) said that the Government was aware of the international debate surrounding *arraigo* and its potential abuse. The duration of *arraigo* arrangements and the number of persons detained under such orders had decreased significantly; furthermore, only one national centre, which had been visited by the Special Rapporteur on the question of torture, could be used for *arraigo* detention. There were ongoing discussions concerning the elimination of the institution of *arraigo* as well.

18. **Ms. García Laguna** (Mexico) said that the Office of the Special Prosecutor for Women Victims of Violence and Human Trafficking, which was attached to the Office of the Attorney General of the Republic, was responsible for the AMBER Alert Programme. The programme facilitated the search for children in imminent danger and could be activated as soon as the authorities were notified of a disappearance. In 2014, searches were conducted for over 150 children and adolescents, most of whom were found within 72 hours. Social networks were also used by the programme in its searches. Meetings had been convened with various countries in Central America and other parts of Latin America to design a humanitarian policy on unaccompanied migrant children in which priority would be placed on the search for disappeared migrant children. Working groups had been set up on the development of standards, legal assistance, investigations, training and information exchange. Centres for migrant children, including additional centres along migration routes, had been established in all states and were staffed with specialized personnel.

19. Investigative procedures at the federal and state levels for cases involving alleged victims of enforced disappearance were responsive to requests from victims' families and ensured that all lines of investigation remained open. An investigative protocol was being developed that was expected to win congressional approval in the near future. In addition, the authorities often accompanied victims' families in their search for their loved ones' remains and took DNA samples. As one example, searches had recently been carried out in the State of Guerrero, and a number of bodies had been found.

20. A genetic database was under development that would contain information provided by victims and their families, the federal police and its scientific division, and other institutions. A protocol concerning the use of the genetic database by all forensic medical services in the country would be adopted shortly. Training in the area of enforced disappearance had been provided to thousands of officials working in the field of rehabilitation, in the Office of the Attorney General of the Republic and in the federal police force.

21. **Mr. Gómez Robledo** (Mexico) said that many of those initiatives were the result of cooperation with the International Red Cross and the Office of the United Nations High Commissioner for Human Rights.

22. **Mr. Moreira Valdez** (Mexico) said that legislation in the State of Coahuila specifically established the legal obligations to look for disappeared persons and to register all reports of disappeared persons, as well as the duty of employers to hold disappeared persons' posts open for them and to continue to pay their salaries. The positive impact of that legislation had fostered discussions of the possibility of introducing similar laws in other states. The fact that, under Mexican law, people were not required to carry identity documents increased the risk of disappearance or mistaken identity when a person was detained. The Government recognized the problems posed by that situation and was addressing the issue. Furthermore, because not all states provided for a declaration of absence, the general law on enforced disappearance would contain a provision in that respect.

23. **Mr. Baltazar Samayoa** (Mexico), responding to a question as to whether or not it was legal to arrest someone for purposes of identification, said that the law provided for two types of arrest and detention procedures: one applied when a trial was ongoing; the other applied before proceedings had been initiated. During a trial, an arrest warrant was required. In the other case, pretrial detention could be requested only by the Federal Prosecution Service and only in cases of emergency involving serious crimes or cases of flagrante delicto. Any authority found to have arrested and held a person for purposes of identification was therefore acting outside of the law and would face administrative or criminal charges.

24. **Ms. Festinher Arias** (Mexico) said that, under Mexican law, police authorities were required to register all detained persons and to enter all personal details and the times and places of their detention in the log. Guidelines would be drawn up to ensure that the registers were filled out in accordance with article 17 of the Convention.

25. **Ms. Peláez** (Mexico) said that the Executive Commission for Victim Support was the principal national victim support agency. The Office of the Assistant Attorney General for Human Rights, Victim Assistance and Community Services afforded immediate support to victims, particularly with respect to access to justice. The Strategic General Directorate for Human Rights of the Ministry of the Interior monitored cooperation and coordination with other government bodies, encouraged other ministries to launch initiatives to restore victims' rights, and provided material support and accompanied victims to medical centres and meetings with legal counsel. Reparation, which included compensation and other forms of redress, for victims of the "dirty war" had been granted to almost a third of all affected families. Extensive efforts were being made to look for the remaining families so that they could be provided with reparation.

26. **Mr. Hernández Barros** (Mexico) said that the definition of the term "victim", as set out in the Convention, was reproduced in the legislation of 20 states, and the others had been requested to update their legal framework in that regard. The definition contained in the Federal Code of Criminal Procedure was not in conformity with the definition that figured in the Victims Act and did not encompass indirect victims of enforced disappearance. In practice, however, the judicial system had always granted protection to victims' families and allowed them to attend trials. The Victims Act could be applied retroactively and was currently being invoked in cases involving victims of the "dirty war". Under the Act, a person could be classified as a victim on the basis of the findings of national and international human rights bodies and could be granted reparation accordingly. Some cases had been heard in accordance with the principle of good faith as set forth in the Act. In such cases, the objective was not to establish whether or not a person had been subjected to enforced disappearance but rather to provide victims with support and protection. A substantial budget had been earmarked for the payment of financial reparation to victims under the Act, which did not set any limit on the amount of compensation to be paid.

27. The members of the Executive Commission for Victim Support were specialized lawyers. A larger budget was needed so that a sufficient number of lawyers could be engaged to assist all victims. The Commission assigned a lawyer to each victim and used all means at its disposal, including the Internet, to contact and provide support to victims.

28. **Mr. Beltrán Benites** (Mexico) said that only military personnel were subject to the jurisdiction of military courts and that military judges were independent. Civilian laws were also applicable in military court trials, and civilian authorities reviewed decisions handed down by military courts. When a civilian was involved in a military case, the trial was referred to a civilian court of law. Military detention facilities were designed specifically for that purpose and no other military facilities could be used as places of detention. They were monitored by the national human rights ombudsman and by international bodies.

Training had been provided to military personnel in all three branches of the armed forces in line with international standards. Guidelines for military personnel concerning victim support and access to justice had also been amended to conform to those standards.

29. **Mr. Gómez Robledo** (Mexico) said that international standards were directly applicable in the national legal order. Constitutional review was a gradual process that occurred as individual cases were brought before the courts. The Supreme Court, in conjunction with the National Human Rights Commission and the Government, had set up a programme to train a new generation of judges in human rights issues, with a particular focus on how to interpret international treaties. With the assistance of the Inter-American Court of Human Rights, it had also created an online portal that gave judges access to the relevant case law. All the recommendations issued by the human rights treaty bodies since the 1980s had also been compiled. While Mexico was a party to the Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes against Humanity, the necessary legal amendments had yet to be introduced. Recalling that changes in United States immigration laws had prompted an unprecedented influx of migrants, including children, from Central American countries via Mexico, he said that the Mexican authorities were cooperating with their counterparts to build the capacity of consular offices to protect their nationals abroad.

30. **Mr. Hazan**, pointing out that the restrictions on access to information set forth in articles 13 and 14 of the Federal Act on Transparency and Access to Public Information appeared to be quite broad in scope, asked whether they applied to cases of enforced disappearance and whether it was true that those provisions were used as grounds for refusing to declassify archives. He requested further information on the immediate registration of arrests and detention. He also asked whether the institution of *arraigo* would be abolished in 2016 following the introduction of amendments to the Federal Code of Criminal Procedure or whether that point was still under discussion. Recalling the delegation's statement that having identification documents on one's person was not compulsory, he wished to know what procedures were in place to determine a detainee's true identity and how habeas corpus proceedings worked without a form of formal identification. What steps had been taken to ensure that migrants were aware of the protection mechanisms available to them? He would also like to know whether the Attorney General had adopted separate protocols for the investigation of disappearances and the search for missing persons.

31. **Mr. Huhle**, noting significant discrepancies between official figures and those provided by the Truth Commission, and specifically in reference to the successful searches mentioned earlier by Ms. García Laguna, said that he would like to know how far back the mass graves in the State of Guerrero dated. He remained convinced that victims would be better served by a single victims assistance body, and he would like to know what measures were in place to provide guidance to victims who were seeking help. Referring to reports that victims, especially migrants, had difficulty obtaining assistance when they lacked the requisite documentation, he asked whether those requirements might be tailored to the realities of the situation in which victims found themselves.

32. **Mr. Gómez Robledo** (Mexico) said that, under the criminal codes of nine states, statutory limitations did not apply to cases of enforced disappearance. The institution of *arraigo* would not be abolished under the new criminal justice system; however, discussions on how to limit its use were ongoing.

33. **Ms. García Laguna** (Mexico) said that the requirement that victims had to sign their petitions for *amparo* had been withdrawn pursuant to the constitutional reform. The protocol adopted by the Attorney General addressed both the search for missing persons and the identification of disappeared persons and would be adopted within six months. Providing a series of statistics regarding the exhumation and DNA testing of remains, she

said that exhumations had been carried out by teams of independent experts and had led to the identification of persons who had gone missing as far back as 2000.

34. **Ms. Festinher Arias** (Mexico) said that transparency measures were continuously being strengthened. Although the Federal Act on Transparency and Access to Public Information prohibited the release of information in cases of serious human rights violations and crimes against humanity, the prohibition could be lifted if it were deemed to be in the public interest to do so. The police were required by law to notify the National Information Centre as soon as an arrest was made.

35. **Ms. Peláez** (Mexico) said that one of the objectives of the General Act on the National Public Security System was to prevent the use of incommunicado detention. The fact that there were over 1,500 police units in the country made the coordination of its enforcement difficult, however. Nevertheless, thanks to considerable investments in technology, an electronic platform had been set up to facilitate communication among the various law enforcement agencies. The need for a consolidation of police mandates was under discussion, and the President had submitted a proposal in that connection. One of the purposes of the Victims Act was to make user-friendly services available through the Executive Commission for Victim Support; however, by virtue of the country's federal system, each state also had victim assistance offices. By law, all public servants were required to provide assistance and protection to victims in need. Once basic assistance had been provided, victims were referred to the Executive Commission for registration, legal counselling and other support.

36. **Mr. Huhle**, noting the unprecedented interest generated by the dialogue with Mexico, said that he hoped that the situation in the country would continue to garner external attention. He was confident that the current dialogue marked the beginning of a constructive relationship between the Committee and the State party.

37. **Ms. García Laguna** (Mexico) said that the Government recognized the seriousness of the issue of enforced disappearance and that it was committed to meeting the needs of victims.

38. **Mr. Gómez Robledo** (Mexico) said that he trusted that the make-up of the delegation, and especially the presence of the President of the National Human Rights Commission, had demonstrated the Government's determination to tackle the issue of enforced disappearance. It was well aware of the challenges, was keen to receive the Committee's recommendations on how to improve the country's legal framework and its victim assistance services, and looked forward to the continuation of its dialogue with the Committee.

39. **The Chairperson** said that the Government was to be commended on the level and diversity of the delegation. The Committee wished to reiterate its heartfelt appreciation for the participation of NGOs and relatives of disappeared persons, whose input had informed the dialogue with the State party.

The meeting rose at 12.55 p.m.